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SERVICE DATE - MAY 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-581X

1411 CORPORATION—ABANDONMENT EXEMPTION—IN LANCASTER COUNTY, PA

STB Docket No. AB-529X<sup>1</sup>

MIDDLETOWN & HUMMELSTOWN RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN LANCASTER, PA

Decided: May 7, 2001

1411 Corporation (1411) and Middletown & Hummelstown Railroad Company (M&H) (collectively Applicants) filed separate verified notices of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon service over the same line of railroad extending from milepost 39.3, in the borough of Columbia, to milepost 37.2, in West Hempfield Township, a distance of approximately 2.5 miles in Lancaster County, PA (line).<sup>2</sup> Notice of the exemption was served and published in the Federal Register on April 12, 2001 (66 FR 19000).

The exemption was scheduled to become effective on May 12, 2001, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Frank Sahd Salvage Center, Inc. (Sahd) to purchase the line, which has the effect of staying the effective date of the exemption for 10 days until May 22, 2001.<sup>3</sup> Sahd notes that it has requested that Applicants provide it with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs are due no later than 30 days after publication of the notice of exemption in the Federal Register.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 17, 2001, recommending that no conditions be

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<sup>1</sup> These proceedings are being handled together for administrative convenience.

<sup>2</sup> Past agency decisions concerning this line indicated that the line extended from milepost 39.7 to milepost 37.2. Interested persons should be on notice that the abandonment proposals quite likely concern the line from milepost 39.7 to milepost 37.2.

<sup>3</sup> See 49 CFR 1152.27(c)(2)(i).

imposed on any grant of abandonment authority. Comments to the EA were due by May 1, 2001, but none was received.

In the EA, SEA concluded that the right-of-way may be suitable for other public use following abandonment in this proceeding. By letter/petition filed April 17, 2001, the Shawnee Run Greenway, Inc. (Shawnee) filed a request for issuance of a notice of interim trail use (NITU) and rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with Applicants for acquisition of the right-of-way for use as a trail. Shawnee submitted a statement indicating its willingness to assume full responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2).

Shawnee has satisfied the requirements for both a public use condition and a NITU and, therefore, imposition of both would be appropriate (assuming that 1411 and M&H are willing to negotiate with Shawnee for trail use) commencing with the effective date of the exemption. However, an OFA takes priority over any requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If agreement is reached on sale or subsidy of the line, public use and trail use conditions would be unnecessary and unavailable. If no agreement is reached on the OFA, the appropriate decision and notice of interim trail use will be issued.<sup>4</sup>

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

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<sup>4</sup> Letters in support of Shawnee's request for issuance of a notice of interim trail use and for issuance of a public use condition were filed by Representative Thomas E. Armstrong, Member, House of Representatives, Commonwealth of Pennsylvania, and Senator Noah W. Wenger, Majority Caucus Chairman, Senate of Pennsylvania. Issuance of a NITU would require the consent of 1411 and M&H.

It is ordered:

1. This proceeding is reopened.
2. The requests for issuance of a notice of interim trail use and for issuance of a public use condition are held in abeyance pending completion of the OFA process.
3. If the OFA process terminates, a decision effective on its service date will be issued to impose the notice of interim trail use and the public use condition.
4. Applicants are directed to provide Sahd with the requested information to enable Sahd to file an OFA. The deadline for Sahd to file its OFA is May 11, 2001.
5. The effective date of the exemption is postponed until May 22, 2001.
6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary